

Pornography and the Traffic in Women: Brief on Behalf of Trudee Able-Peterson, et al., Amici Curiae in Support of Defendant and Intervenor-Defendants, *Village Books v. City of Bellingham*

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Introduction

Some nights ago, while I was struggling with how to introduce this piece, I decided that the only reasonable course was to reread John Steinbeck's *The Grapes of Wrath*. There they all were, Tom and Ma Joad, Preacher Casy, Rose of Sharon, Uncle John, Ruthie and Winfield, the bank agents, the truck, Route 66, California. The little story, the story in the story, is about what they learn from each other, what becomes of this sharecropper family evicted from their land in Oklahoma, battered by wind, poverty and exploitation. Then there is the story surrounding the story, the historical story of the Depression Dust Bowl, of labor resistance, of human suffering and death. That larger story is both roots and atmosphere of the novel, elevating the story of the small Joad family into an act of political exegesis. Then there are the stories but half-told in the novel, the stories of the characters not placed on center stage like Tom and Ma Joad, but who move in and out of the story only as they have meaning for Tom or Ma. If *The Grapes of Wrath* were Rose's story, or Winfield's, we would know them all differently.

What follows is a legal brief on prostitution, and the relationship between pornography and prostitution. It was written for and filed in a real

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For Toby Summer, survivor, poet, gardener, resister.

I wish to thank the amici, whose work and lives made sayable what is said in this brief, Annie McCombs, whose organizing skills, tenacity, wisdom and friendship made it possible, Washington Women for Civil Rights, Jane Doe, Mary Moe, Linda Marchiano, Catharine MacKinnon, Andrea Dworkin, and Deborah Maranville, who made it audible, and Arizona Luciano, Patricia Leary, Angela Hatcher, Beverly Perkins and Marlene Guerrieri, who made it material. I would also like to express my gratitude to Jeanne Barkey, Pauline Bart, Rhea Becker, Evelina Kane, Nikki Craft, Dorchon Leidholdt, Norma Ramos, Penelope Seator, Therese Stanton, Dorothy Teer, Melinda Vadas, Julie Vobosa and all women and men who work in this movement for the inspiration of their courage and dedication.

lawsuit.^a Like a novel peopled with many characters, whom we come to know and understand as they live and eat and talk together, this lawsuit had many actors. This brief was just one. To read it, standing alone, necessarily conveys an incomplete account both of itself and of the litigation of which it was a part, as if all we read in *The Grapes of Wrath* were only Preacher Casy's speech to Tom at Keene's Ranch, or Ma Joad's rejoinders to Tom in their farewell conversation. I will try here, then, to provide a more complete account of the entire lawsuit than the text of the brief provides. This lawsuit, too, had its roots in a particular political and legal landscape, linking Minneapolis and Indianapolis and Cambridge, Massachusetts and New York City and Los Angeles and Bellingham, Washington. That is the story surrounding the story, which I can only suggest here. Finally, this brief and the interests it represents was, legally, a secondary character in this lawsuit, a Rose of Sharon to other Tom Joads, a half-told story. In very real ways, the story of this litigation is the story, too, of why that became true.

On November 8, 1988, sixty-two percent of the voters in Bellingham, Washington, voted to adopt an anti-discrimination ordinance, drafted by scholars Andrea Dworkin and Catharine MacKinnon, creating civil causes of action for sex-based injuries caused by pornography.^b This electoral victory followed a sustained educational and organizational effort by local feminists and progressive organizations in Bellingham. Providing a legal tool for victims of pornography to seek remedial actions on their own behalf, the Bellingham ordinance was inspired by similar measures enacted by the city councils of Minneapolis and Indianapolis in recent years.^c The ordinance creates five civil causes of action for damages or an injunction: (1) coercion of any person into performing for pornography; (2) trafficking in pornography; (3) forcing pornography on a person; (4) assaulting any person in a way that is directly caused by specific pornography; or (5) defaming any person through the unauthorized use in pornography of their name or likeness.^d The ordinance also sets forth, as the operant definition of pornography, "the graphic sexually explicit subordi-

^a *Village Books v. City of Bellingham*, No. 88-1470 (W.D. Wash. Feb. 9, 1989). (Alphabetical footnoting is used here, and to designate additional footnotes in the text of the brief, to distinguish them from the footnotes contained in the original text. The original footnotes are designated by conventional numerals.)

^b Bellingham Herald, Nov. 9, 1988, § B, at 1; Chicago Tribune, Dec. 18, 1988, "Tempowoman" Section, at 7. The complete text of the Bellingham ordinance is set forth in an appendix to this piece.

^c Amendment to the Minneapolis, Minn., Code of Ordinances, tit. 7, ch. 139 (December 30, 1983) (vetoed by the mayor January 5, 1984; reenacted in amended form on July 13, 1984; vetoed by the mayor on the same day); Indianapolis, Ind., City-County General Ordinance No. 24, ch. 16 (amended May 1, 1984); amended again by Indianapolis, Ind., City-County General Ordinance No. 35 (June 15, 1984). The City of Los Angeles has considered a similar version of the ordinance, and a referendum on the ordinance was rejected by less than 4,000 votes in Cambridge, Massachusetts in November, 1985. New York Times, Nov. 12, 1985, at A16, col. 6.

^d See Appendix, *infra*, Bellingham Initiative 1C, § 3.

nation of women through pictures and/or words," that also includes specific presentations of women as inferior and degraded.^e

Shortly after the effective date of the ordinance, focus shifted from the voting booths in Bellingham to the federal courthouse in Seattle. On November 23, 1988, a lawsuit was filed in federal district court against the City of Bellingham challenging the constitutionality of the new ordinance.^f The lawsuit was initiated by two bookstore trade organizations, a library association, a local bookstore, and several Bellingham residents.^g The plaintiffs sought declaratory and injunctive relief against enforcement of the ordinance on several legal theories.^h

The plaintiffs relied heavily on the outcome of a legal challenge to the anti-pornography ordinance passed in Indianapolis in a suit brought by similar plaintiffs.ⁱ In that case, the plaintiffs had prevailed before both the federal district court and the court of appeals; the Supreme Court summarily affirmed the disposition.^j Alleging that the provisions of the Bellingham ordinance are materially similar to those invalidated in the Indianapolis case, the plaintiffs here argued that the Supreme Court's disposition was binding precedent in this lawsuit. The plaintiffs further alleged that the ordinance was a "content-based" and "viewpoint-based" restriction on speech impermissible under the First Amendment, as the lower courts in *Hudnut* had concluded. In addition, the plaintiffs asserted that the ordinance was unconstitutionally vague and overbroad, failing to give residents and business persons fair notice of what materials constitute pornography under its provisions. These allegations were further elaborated in the plaintiffs' memorandum in support of their motion for summary judgment.^k

The City of Bellingham, the formal defendant in the lawsuit, declined to defend.^l Women in Bellingham filled the breach, successfully intervening Washington Women for Civil Rights and two individual women, all

^e *Id.* at § 2.

^f Complaint, *Village Books*, *supra* note a.

^g *Id.*

^h I hope that this will be as accessible as possible to people who are not lawyers and thus will try to keep legal jargon to a minimum. "Declaratory and injunctive relief," in this context, means that the plaintiffs asked the court to void the ordinance before it was actually used by anyone.

ⁱ *American Booksellers Association, Inc. v. Hudnut*, 598 F.Supp. 1316 (S.D.Ind. 1984), *aff'd* 771 F.2d 323 (7th Cir. 1985), *aff'd mem.*, 475 U.S. 1001 (1986), *reh'g denied*, 475 U.S. 1132 (1986). One of the plaintiffs in this case was the same American Booksellers Association. In both cases, the plaintiffs were represented by the American Civil Liberties Union.

^j *Id.* The summary affirmance was rendered without full briefing, without argument, and with no citation to existing case law.

^k For non-lawyer readers: A motion for summary judgment asks the court to decide the case based on the documents before it. In this case, those documents included legal arguments on the questions by both sides, sworn statements by parties and experts, as well as additional written documents submitted by both sides. The effect of granting a motion for summary judgment is to preclude any further hearings or consideration of additional evidence.

^l This was not the first time the city balked at this ordinance and the wishes of its citizens to have it enacted as law. Prior to the vote, the city had attempted to keep the ordinance off the ballot altogether, requiring legal action to assure that the measure would be placed on the ballot.

of whom asserted legal interests in the enforcement of the ordinance, as intervenor-defendants. In extensive memoranda, the women challenged the plaintiffs' characterization of the ordinance as either a "viewpoint-based" or "content-based" restriction on protected speech. Rather, they argued, the ordinance is predicated, not on what pornographic material says or looks like, but on what it does and how it is used: to subordinate women. Thus, under this construction of the ordinance, the ordinance is "harm-based," tailored to provide redress for demonstrable injuries to women, not to suppress the content of the material.^m

The intervenor-defendants further argued that, even if the ordinance were construed as content-based, its provisions nevertheless meet constitutional requirements in that a compelling interest in prohibiting discrimination against women justifies them. Similar arguments were raised by Linda Marchiano, who as "Linda Lovelace" was coerced into making the film "Deep Throat," in her memorandum in support of her motion to intervene as an intervenor-defendant. The intervenor-defendants also moved for summary judgment in their favor, or, in the alternative, for the court to deny summary judgment for the plaintiffs and to proceed to trial on the factual question of the sufficiency of the showing of harm to women to sustain the ordinance. Several other briefs *amicus curiae*,ⁿ including this one, were also filed at this juncture, representing the interests of diverse groups and individuals in the legal redress available under the ordinance.^o

On January 18, 1989, the court denied Linda Marchiano's motion to intervene; she subsequently filed an amicus brief in the case. This order was the final substantive ruling by the court prior to its disposition of the parties' motions for summary judgment. As this lawsuit was structured, the presentation of the issues seemed strangely skewed in the absence of those persons most likely to be affected by the ordinance itself. Ultimately,

^m This brief analysis of the arguments presented in the case cannot, I am afraid, do any of them justice. For an exposition of the legal theories supporting the constitutionality of the ordinance outlined here, see MacKinnon, *Pornography, Civil Rights, and Speech*, 20 HARV. C.R.-C.L. L. REV. 1 (1985); Sunstein, *Pornography and the First Amendment*, 1986 DUKE L.J. 589; Seator, *Judicial Indifference to Pornography's Harms: American Booksellers v. Hudnut*, 17 GOLDEN GATE U.L. REV. 297 (1987). For elaboration of the opposing view, see *Hudnut*, *supra* note f, Stone, *Comment: Anti-Pornography Legislation as Viewpoint Discrimination*, 9 HARV. J.L. & PUB. POL'Y 461 (1986); Emerson, *Pornography and the First Amendment: A Reply to Professor MacKinnon*, 3 YALE L. & POL'Y REV. 130 (1984).

ⁿ "Amicus curiae" literally means "friend of the court." Unlike formal parties to a lawsuit, "amici" participate only as "advisors" to the court on issues about which they may claim special expertise.

^o Articulating the interest in the litigation of sexually exploited children were amici Institute for Youth Advocacy, Voices in Action, Anne Burgess and Flora Colao, represented by Kent Harvey. Amici Andrea Dworkin, Gloria Steinem, and Susan Brownmiller, represented by Penelope Seator, expressed their interest in gaining redress for defamation in pornography. The Seventh Circuit's opinion in *Hudnut*, *supra* note i, was criticized for its broad negative effect on efforts to gain equality for women by amici Women's Institute for Freedom of the Press and Seattle National Organization for Women, represented by Cass Sunstein.

I would here like to acknowledge the incisive advocacy of Deborah Maranville, counsel for the intervenor-defendants, and Catharine MacKinnon, counsel for Linda Marchiano.

none of the plaintiffs in the case asserted that they in fact sold, distributed, or trafficked in pornography, or were subject to enforcement actions, under any plausible application of the ordinance. The initial defendant, the City, whose citizens had endorsed the ordinance, refused to defend the suit. Although the intervenors eloquently and cogently asserted the interests of women in the relief afforded under the ordinance, women and children whose lives have been deeply brutalized or destroyed by exploitation by pornography were largely confined to amici status. Women and children in prostitution, children subjected to sexual exploitation, Linda Marchiano, women whose reputations and integrity as women have been twisted in pornography, became secondary actors in a legal arena reserved for the least culpable on the plaintiffs' side, the least injured on the defendants'. This was *The Grapes of Wrath* written by Herbert Hoover.

The women whose lives you will read in this brief are women for whom this ordinance was written. I can say nothing more than what is before you about why that is true. For women who read this who are or have been in prostitution: I have tried here, with all I had, to tell the truth as best I understand it.

BRIEF ON BEHALF OF TRUDEE ABLE-PETERSON, ET AL., AMICI
CURIAE IN SUPPORT OF DEFENDANT AND INTERVENOR-DEFENDANTS^P

Interest of Amici

Amici are organizations and individuals expert in the effect of pornography on women and girls in prostitution. Amici represent a spectrum of experience in this work, including scholarly contribution, provision of social services, advocacy, and personal knowledge. Amici include organizations of prostitution survivors such as amicus WHISPER, as well as social service agencies providing aid to women in prostitution and assistance in escaping prostitution. Those agencies include Genesis House in Chicago, Project Off Streets and the PRIDE program in Minneapolis, and Project RESPECT in Madison, Wisconsin. Numerous directors and staff of other such agencies, such as Trudee Able-Peterson of the New York Streetwork Project, Teri Lynch of the Delancey Street Foundation in San Francisco, Susan Hunter, Patricia French, Vicki Neland, Barb Sussex, and Susan Tisdale in Portland, Oregon, are also represented. Agencies and individuals providing shelter and assistance to victims of sexual violence are among the amici, as well as individuals and groups in advocacy roles. Former Minneapolis Council member Charlee Hoyt was an initial sponsor of the Minneapolis anti-pornography ordinance and is broadly experienced in the injuries to women caused by pornography. Amicus Professor Kathleen Barry has written a definitive account of prostitution as a system in her important and influential work, *Female Sexual Slavery*. Amicus Professor Jane Caputi has contributed an important study of serial sexual murders, murders in which prostituted women are often targeted. Several amici are themselves survivors of prostitution and pornography.

From this wide range of expertise and insight, amici all concur that women in prostitution are primary victims of pornography. The Bellingham anti-pornography ordinance, in amici's experienced judgment, is crucial to affording women in prostitution a means of redress and of enabling them to initiate protective action on their own behalf. For amici's work in dismantling systems of sexual exploitation and abuse and supporting individual survivors to succeed, this ordinance is a necessary tool.

The Amici^Q

Trudee Able-Peterson is the Director of the Streetwork Project, an outreach program for homeless children in Times Square. She is the author

^P The text of the brief as reprinted here is identical to the text submitted to the court, with minor corrections of citation form and typographical errors. Patricia Leary co-signed the brief; I am responsible for it. James Dean patiently assisted in the preparation of the text for publication. The consent of each of the amici was obtained for republication of the document here.

^Q Annie McCombs deserves all credit for making this list a reality.

of *Children of the Evening*, and a survivor of pornography and prostitution.

Dr. Kathleen Barry is a sociologist and associate professor of Human Development at Pennsylvania State University. She is the author of *Female Sexual Slavery*. Her research reveals that women in prostitution are among the groups of women most endangered by pornography.

Professor Jane Caputi is an assistant professor of American Studies at the University of New Mexico. She is the author of *The Age of Sex Crime*, an investigation of serial sex murderers. Her research has shown that pornography played a significant role in the lives of serial sex killers and that many serial sex killers target prostitutes.

Challenging Media Images of Women is an organization that contests degrading and abusive images of women in the media.

Patricia A. French is a Portland, Oregon social service agency case manager who works with victims of pornography.

Frogtown Neighborhood Services/Catholic Charities, of St. Paul, Minnesota provides individual counseling, advocacy and crisis intervention to adult women in prostitution. Of particular concern to the agency is the use of "homemade" and commercial pornography in trapping women in prostitution.

Genesis House has provided services to over 4,000 women in prostitution in Chicago, primarily women in street prostitution, in the last four years; the vast majority of these women did not *choose* to be involved in prostitution.

Charlee Hoyt is a former Minneapolis, Minnesota City Council member and the cosponsor before that body of the first anti-pornography civil rights ordinance to be considered by a legislative body.

Alma Goddard is the Outreach Coordinator and counselor at the Bradley-Angle House, Inc. in Portland, Oregon, a shelter program for victims of domestic and sexual violence.

Susan Kay Hunter has worked for five years as the Executive Director of an organization which has provided social services and hope to over 450 women and children in Portland, Oregon, all of whom are survivors of prostitution.

Becky Ann Jones is a survivor of pornography and prostitution.

Teri Lynch is a member of the Delancey Street Foundation, San Francisco, and has been involved in working with women in prostitution for fifteen years.

Minnesota Coalition for Battered Women is a 70 member organization in Minnesota offering technical assistance and training to programs statewide addressing the needs of battered women and their families, including women escaping prostitution.

Amelia Moore is a survivor of prostitution. She is a member of the

Board of Directors of an Oregon social service agency providing services to survivors of prostitution.

Vicki Neland is a case manager in a social service agency in Portland, Oregon who works with victims of pornography.

Organizing Against Pornography (OAP) is a community-based organization in Minneapolis, Minnesota which seeks to raise awareness about the pornography-related victimization of women. OAP advocates for many women survivors of prostitution and pornography.

Aloha Palmer is a coordinator of rape education and rape support groups in Portland, Oregon.

Pornography Awareness, Inc. is a nonprofit feminist organization. The objectives of the organization include ending both prostitution and pornography.

PRIDE (People Reaching Out In a Determined Effort to End Prostitution) Program of Family and Children's Services, Minneapolis, Minnesota, has for ten years been helping women and children to leave prostitution.

Project RESPECT is a private nonprofit publicly funded outpatient agency for women involved in systems of prostitution, women trying to leave prostitution, and women trying to stay out of such systems who need support to do so. The program is also in some cases an alternative to criminal fines for women arrested on prostitution charges. The agency provides services to between eight and fifteen women at any given time.

Project Off Streets works with male and female youth in the Minneapolis-St. Paul area who have been sexually exploited. Workers there have seen hundreds of children who have been involved in the sex industry as young as age eleven, and they believe that prostitution and pornography devastate the lives of young boys, girls, and women.

ReSisters is an activist group in Albany, New York committed to opposing the harms of pornography.

Toby Summer is a survivor of prostitution and other forms of sexual abuse and knows that the remedies in this ordinance would have changed her life.

Barb Sussex is a social worker who works with prostitution survivors and people trying to leave prostitution. She is a member of the Board of Directors of a social service agency that works with survivors in Portland, Oregon.

Betsy Warrior is the Director of the Battered Women's Directory and supports the ordinance based on her work with battered women.

Tess Wiseheart is the Executive Director of a social organization providing services to women and children who are victims of domestic violence and sexual assault.

Sarah Wynter is a survivor of prostitution.

Women Hurt in Systems of Prostitution Engaged in Revolt

(WHISPER) is an organization of survivors of prostitution devoted to ending prostitution.

Women Organizing Against Pornography and Prostitution (WOAPP), Oakland, California, is an organization comprised of activists and survivors of many forms of sexual abuse working to stop the harm done to women and children by pornography and prostitution.

Chris Womendez is the president of the Prostitutes Union of Massachusetts (PUMA).

Women's Alliance Against Pornography Education Projects, Cambridge, Massachusetts, is a feminist organization dedicated to educating the public to the harms of pornography.

Wyoming Coalition Against Domestic Violence and Sexual Assault, Laramie, Wyoming supports the Bellingham ordinance.

Wyoming State Office on Family Violence & Sexual Assault, a unit of the Division of Community Programs, Department of Health and Social Services, Cheyenne, Wyoming, supports the Bellingham ordinance.

Argument

Amici urge this court to deny plaintiffs' motion for summary judgment and grant intervenors' motions opposing summary judgment and cross motions for summary judgment. Intervenors have ably argued the city's need for a factual hearing and its interest in providing civil redress for the sex discriminatory practices giving rise to claims under the ordinance, and the ordinance's constitutional validity. Amici will here direct the court's attention to the importance of the availability of those remedies to women enmeshed in systems of prostitution and to those women most vulnerable to sexual abuse, exploitation and discrimination through prostitution. The documentation relied on by amici here includes sociological studies, empirical analysis, and survivors testimony.¹ Those data, together with the record developed by intervenors, are material to the sufficiency of the city's justification for this law. Even viewed in the light most favorable to the plaintiffs, this showing, uncontested by the plaintiffs, of the severity of the injury to women caused by the practices prohibited by the ordinance, compels summary judgment in defendant's favor.

INTRODUCTION

Amici's argument is structured, in what follows, by reference to the substantive claims described in the ordinance. We urge this court, for the following reasons, to adopt a similar analytic approach to the issues presented in this case. The federal district and appeals court in *American Booksellers Association, Inc. v. Hudnut*, 598 F.Supp. 1316 (S.D. Ind. 1984), *aff'd* 771 F.2d 323 (7th Cir. 1985), *aff'd mem.* 106 S.Ct. 1172 (1986), from which this court may seek guidance in construing the substantially similar provisions of the ordinance at issue in this litigation, reached their legal conclusions based largely on an analysis of the definition of pornography contained in the ordinance. Both courts, then, proceeded on the assumption that *definitions* "regulate speech."

Legal definitions, in civil contexts, do not and cannot regulate anything. Nor do they, in and of themselves, describe an injury worthy of redress. This unfortunate analytic error, in amici's view, ineluctably led to each court's result. The courts' definition-bound approach, applied in other legal contexts, would have decided *New York v. Ferber*, 458 U.S. 747 (1982)² solely on the issue whether "sexual conduct" as defined in the statute described, in the abstract, "protected expression" without regard to

1. All of this material is plainly relevant to this court's determination of the facts. The Supreme Court in *New York v. Ferber*, 458 U.S. 747 (1982) based its conclusion that prohibition of juvenile sexual exploitation in pornography is a compelling interest both on the judgment of the state legislature and "the judgment found in all the relevant literature." *Ferber*, 458 U.S. at 758.

2. *Ferber* upheld a New York criminal statute subjecting to penal sanctions makers or distributors of visual depictions of "sexual conduct" by minors under the age of 15. *Ferber* is analyzed extensively *infra*.

the sexual exploitation the statute was designed to ameliorate; or *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974)³ on the issue whether “defamatory statements” were entitled to constitutional protection regardless of the identity of the person defamed; or *Stanley v. Georgia*, 394 U.S. 557 (1969)⁴ on the issue whether the material at issue was “obscene” without considering the particular factual context in which possession of the material was criminalized. Each of these cases, consistent with ordinary First Amendment doctrine, required the Court to evaluate the scope of First Amendment interests implicated, in view of the concrete injuries sought to be redressed under the statutory scheme, by actual people, under particular enforcement mechanisms. Indeed, the balancing of competing interests formed the doctrinal core of these opinions. None was or could have been resolved by analysis of the definition of the expressive communication alone. The *Hudnut* courts, however, by seizing on the definition of pornography as dispositive of the case, wholly abstracted from the scope of the legal claims in which the definition operates, and the sex-based character of those injuries, simply sidestepped the substantive doctrinal issues presented.

Amici are perhaps especially attentive to the implications of the courts’ approach. Just as the courts in *Hudnut*, by focusing on the definition of pornography independently of the substantive injuries for which the ordinance would permit redress, rendered those harms largely irrelevant to their analyses, so too is the reality of prostitution for women commonly trivialized and, by sleight of hand, made invisible by the *social* definition of “prostitute”: a woman who is so debased she will voluntarily exchange sex for money. This “definition,” too, obscures and distorts the systems of sex-based coercion, violence and despair which is the common lived experience of prostitution for women. In what follows, amici will attempt to clarify for this court the means by which the pornography industry collaborates in the victimization of prostituted women, and the consequent importance of the availability of the legal claims created by the ordinance in remedying those conditions.

3. *Gertz* established a sliding scale of constitutional protection for libel defendants depending on the status of the libel plaintiff. Cf. *New York Times v. Sullivan, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749 (1985) (sliding scale approach depending on whether defamatory statement dealt with a “matter of public concern”). The status of the plaintiff as well as the subject matter of the statement are now each to be taken into account in assessing the First Amendment protection due the speaker.

4. *Stanley* held that the possession of obscene literature in the home could not be criminalized consistent with First Amendment and privacy doctrine, even though “obscenity” had been declared in prior opinions of the court to be categorically without First Amendment protection. See, e.g., *Roth v. United States*, 354 U.S. 476, 485 (1957) (“obscenity is not within the area of constitutionally protected speech or press”).

II. THE INTERESTS OF THE CITY IN INHIBITING SEX
DISCRIMINATORY, SEXUALLY EXPLOITATIVE, AND ABUSIVE PRACTICES
OF PROSTITUTION ARE CONSTITUTIONALLY FURTHERED BY THE
ORDINANCE

Amici concur in the argument advanced by the intervenors that pornographic materials, as legally effective in the ordinance, are not entitled to First Amendment protection.⁷ Amici contend, however, that the ordinance in any case addresses a compelling state interest in inhibiting sex discriminatory and sexually exploitative practices of prostitution. It is established that government may regulate speech directly, even based on its content, if the regulation is justified by an interest of compelling importance and is narrowly drawn to meet that end. *Boos v. Barry*, 108 S.Ct. 1157, 1164 (1988); *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984); *Perry Education Assn. v. Perry Local Educator's Assn.*, 460 U.S. 37 (1983); *New York v. Ferber*, 458 U.S. 747 (1982). In evaluating the weight of the governmental interest, the proximity of the expression regulated to the "core values" of the First Amendment is also taken into account. *Compare Meyer v. Grant*, 108 S.Ct. 1886, 1894 (1988) (regulation of ballot initiative, core political speech, requires state to overcome "well-nigh insurmountable" burden of justification) *with Roberts*, 104 U.S. at 618-623 (justifying burden on expressive association less onerous than justifying burden on intimate association) *and with Ferber*, 458 U.S. at 762-63 (*de minimus* speech value of expression in child pornography relevant to weight of state's burden of justification). To clarify for the court the full dimensions and impact of the discriminatory practices redressable under the ordinance on this group of women in particular, and because the condition of prostituted women is so little understood, amici will initially describe those conditions in broad outline. Amici contend that, so understood, promotion of the equality, freedom and safety of these women is a compelling interest. Amici will then demonstrate the means by which the causes of action described in the ordinance further that interest. Finally, we will show that those provisions are narrowly drawn to meet that end.

A. *The promotion of equality, safety and freedom of prostituted women is a legitimate governmental objective furthered by the ordinance.*

Like the pornography industry, the institution of prostitution is an enormous economic enterprise. By one estimate, forty million dollars *per day* is spent on prostitution in the United States, or over \$14 billion dollars a year. This figure excludes receipts from pornography and so-called "live sex." C. Pateman, *The Sexual Contract* 190 (1988). The total num-

⁷ I would like to stress again here that the intervenors' principal argument was that the ordinance is neither a viewpoint nor content-based restriction on protected materials. See *supra* note m. and accompanying text.

ber of customers each week across the country has been conservatively estimated at 1,500,000 men. Jennings, *The Victim as Criminal: A Consideration of California's Prostitution Law*, 64 Cal. L. Rev. 1235, 1251 (1976). The commodity exchanged in these transactions is women's bodies. According to one estimate, the "average street prostitute sees 1,500 men a year." Alexander, *Prostitutes Are Being Scapegoated For Heterosexual AIDS*, in *Sex Work: Writings by Women in the Sex Industry* 249 (F. Delacoste & P. Alexander ed. 1987) (hereinafter *Sex Work*).

This vast "industry" is of course fueled and maintained by the demand by men that it exist, requiring a continuous supply of women who are consumed by it. These women tend to share some common characteristics. The average age of starting prostitution is fourteen years old. Weisberg, *Children of the Night: The Adequacy of Statutory Treatment of Juvenile Prostitution*, 12 Am. J. Crim. Law 1, 5-6 (1984); see also Silbert & Pines, *Entrance into Prostitution*, 13 Youth & Soc'y. 471, 483 (1982) (hereinafter Silbert & Pines, *Entrance*); Gray, *Turning-Out: A Study of Teenage Prostitution*, 1 Urb. Life & Culture 401 (1973). Some evidence suggests that the average age is declining. A study of 200 prostituted women in San Francisco revealed that among juveniles, the mean age for beginning prostitution was thirteen years. Silbert & Pines, *Entrance*, *supra*, at 483. A number were under nine, ten, eleven, and twelve.⁵

A majority of these young women and girls were victims of sexual, emotional, and other forms of physical abuse within the home. Research on incidence of sexual abuse indicates that between sixty and seventy percent of women entering prostitution were sexually abused as children. Silbert & Pines, *Entrance*, *supra*, at 479; Weisberg, *supra*, at 4 n.12. Sexual abuse by family members—ordinarily fathers, stepfathers and foster fathers—is the most common form of sexual assault; the average age of victimization is ten years of age. Silbert & Pines, *Entrance*, *supra*, at 479; Weisberg, *supra*, at 4; Enablers Inc., *Study of Juvenile Prostitution in Minnesota* (1978). Patterns of beatings and emotional abuse demonstrate similar rates of injury. See Silbert & Pines, *Entrance*, *supra*, at 479 (forty-five percent of girls beaten regularly while growing up; in over seventy-five percent of cases, the beater was a male in a position of authority over the girl); J. James, *Entrance into Juvenile Prostitution*, Final Report 48 (NIMH study, 1980)(sixty-two percent reported severe physical abuse).

Moreover, in one study, the production and use of pornography were shown to have been instrumental in substantial percentages of the sexually exploitative acts inflicted on girls prior to entry into prostitution. The Sil-

5. Some accounts mention juvenile prostitution involving children as young as three years old. See, e.g., Densen-Gerber & Hutchinson, *Medical-legal and Societal Problems Involving Child Prostitution, Child Pornography and Drug-related Abuse*, in *The Maltreatment of Children* 318 (1978).

bert and Pines survey of 200 prostituted women revealed, *in unsolicited comments*, that ten percent of the women had been used as children in pornographic films and magazines. All of the women were under the age of thirteen when they were victimized in this way. Silbert & Pines, *Pornography and Sexual Abuse of Women*, 10 Sex Roles 857, 865 (1984) (hereinafter Silbert & Pines, *Pornography*). A much higher number, thirty-eight percent, reported that they had had pornographic pictures taken of them as children before they were sixteen. *Id.* at 866. For example,⁶ one fifteen year old girl, later prostituted, was taken by her mother's boyfriend to a house outfitted with cameras, lights, and a set where he took photographs of her. Interview with "M.D.", Minneapolis, Minnesota, WHISPER Oral History Project 39 (1987). She did not speak of this incident to anyone for twenty years. *Id.* Another woman reports having been offered a ride home by a stranger when she was thirteen or fourteen years old. "[I]nstead of taking me home, he took me to this park and took off my clothes, and started taking pictures, and tied me up." Interview with "R.M.", Portland, Oregon, WHISPER Oral History Project 22. The man apparently had a time-shuttered camera, and took photographs of himself touching the girl's breasts and digitally penetrating her. The incident was reported to the police; the police believed the man and dismissed the girl's statements. *Id.*

In addition, twenty-two percent of the 178 cases of sexual exploitation studied by Silbert and Pines involved the use of pornography by the adult

6. The following accounts were given by women not among the subjects in the Silbert and Pines research. They were among women interviewed for an oral history project of prostituted women conducted by amicus WHISPER. Subsequent citations to the WHISPER Oral History Project refer to this body of research.

As to the relevance to this case of the experience of women outside the city of Bellingham, the Supreme Court in *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986) addressed a similar issue holding that the city of Renton could rely on empirical evidence of the deleterious effects of "adult theaters" in other municipalities in enacting its own zoning ordinance. The Court stated that evidence generated in other cities may be relied upon, so long as that evidence "is reasonably believed to be relevant to the problem that the city addresses." *Id.* at 51-52. Amici are aware of no demographic divergences suggesting prostituted women are differentially treated among locales. Cf. Weisberg, *supra*, at 3 no.7, 8 (noting demographic similarity in socioeconomic, racial patterns in different geographic locales). See also *Kirksey v. City of Jackson*, 506 F.Supp. 491, 517 (S.D. Miss. 1981) (interest of referendum discerned from experience of other communities); *11126 Baltimore Blvd. v. Prince George's County*, 684 F.Supp. 884, 894 n.16 (D.Md. 1988) (collecting cases regarding legislative reliance on experiences elsewhere).

Amici are also aware that testimony of individual women or accounts of particular cases of abuse of prostituted women are often dismissed with some impatience as melodramatic attempts at emotional manipulation, with little or no empirical value. However, in amici's experience, the accounts rendered here describe typical, rather than aberrant, or unusually grotesque, or merely anecdotal, incidents. The relative dearth of thorough-going empirical studies in this area reveals intense and real needs of prostituted women for safety, comprehension, and confidentiality as conditions of participating in sociological studies. The care required in meeting those needs is often acknowledged by researchers in the area. See M. Silbert, *Sexual Assault of Prostitutes* 6-7 (Nov. 1980) (research report to the National Center for the Prevention and Control of Rape); E. Miller, *Street Woman* 183-190 (1986). Thus, in reading these accounts, amici urge the court to recognize that each woman's voice represents hundreds more who require anonymity to speak at all. See, e.g., Summer, *Women, Lesbians and Prostitution*, *Lesbian Ethics* n.1, Summer 1987, at 33 (explaining need to write pseudonymously).

prior to the sexual act. Some abusers used the pornography to persuade the children to “cooperate,” or legitimize their actions, or to arouse themselves prior to abusing the child. Silbert & Pines, *Pornography, supra*, at 865. The researchers describe one example of this latter technique:

[O]ne of the subjects in the study described a primitive movie projector her father had set up in the garage. He used to show himself and his friends pornographic movies to get them sexually aroused before they would rape her. (She was 9 at the time.) Her brother would also watch the movies when the father was gone; then he also abused her sexually.

Id. at 865–866. Moreover, the “line” between coercion into pornography by a family member, sexual assault within the family, and prostitution may be all but invisible in some instances.

A mother and father in South Oklahoma City forced their four daughters, ages ten to seventeen, to engage in family sex while pornographic pictures were being filmed. This mother also drove the girls to dates with men where she would watch while the girls had sex, then she would collect fees of thirty to fifty dollars.

Attorney General’s Commission on Pornography, U.S. Dept. of Justice, Final Report 780 (1986) (hereinafter cited as Attorney General’s Commission, Final Report) (quoting letter to the Commission from Oklahomans Against Pornography).

The effects of these forms of sexual abuse and exploitation on young women have, in recent years, become better understood and more widely publicized. Indeed, the Supreme Court’s disposition in *Ferber* is largely attributable to the enhanced public appreciation of the injury of juvenile sexual exploitation. The weight of clinical evidence “suggests that for any child, sexual contact with an adult, especially a trusted relative, is a significant trauma which may have long-lasting deleterious effects.” J. Herman, *Father-Daughter Incest* 33 (1981); *See also* D. Russell, *The Secret Trauma: Incest in the Lives of Girls and Women* (1986). Their treatment often left them with the feeling “that they were good for little else besides sex.” J. Herman, *supra*, at 100; *see generally* D. Russell, *supra*; D. Finkelhor, *A Sourcebook on Child Sexual Abuse* 143–79 (1986).

Many of these young women and girls run away from home in a courageous and desperate attempt to escape these conditions of abuse, neglect and abandonment. Silbert & Pines, *Entrance, supra*, at 485; Weisberg, *supra*, at 5. The extreme vulnerability of these women to further sexual exploitation is difficult to overstate. As detailed above, the “market” for women in prostitution is immense; once these young women “hit bottom,” alone, without economic resources, and typically, in an extremely de-

pressed mental state, they are again targeted for sexual exploitation by pimps.⁷

Over ninety percent of street prostitutes are controlled by pimps; K. Barry, *Female Sexual Slavery* 6 (1979); while approximately eighty percent of women prostituted from hotels are controlled by pimps. R. Prus & S. Irini, *Hookers, Rounders, and Desk Clerks* 11 (1980). Women are typically "procured" by pimps for prostitution and pornography by several different, sometimes concurrently practiced, strategies:

1) the use of befriending or "love" to feign a relationship, create an emotional dependency and exploit a young woman's vulnerabilities until she can be "turned out" for prostitution; 2) fraudulent employment agencies . . . which the [woman] finds after she [arrives] are only covers for prostitution; [and] 3) kidnapping.

Barry, *Social Etiology of Crimes Against Women*, 10 *Victimology* 164, 166 (1985) (hereinafter Barry, *Social Etiology*); see generally K. Barry, *Female Sexual Slavery*, *supra*, ch. 5. The initial object of these tactics is to gain immediate control, psychological or physical, of the woman. In many instances, immediate physical force is preferred.

Pimp kidnapped me. He got me loaded and kept me on drugs for two weeks. Then he turned me out in exchange for drugs. Once I was hooked I was too scared.

Silbert & Pines, *Entrance*, *supra*, at 488.

Late in 1976, Blood Stewart picked up 14-year-old Jennifer in the vicinity of Penn Station . . . [H]e beat, raped, and tortured her for three days. . . . He then informed her that she was going to work the streets for him.

K. Barry, *Female Sexual Slavery*, *supra*, at 78. A sixteen year old girl was kidnapped by four men while she was walking home from school. She was taken to a pimp's apartment where she was held for two weeks. Toward the end of the second week she deliberately took an overdose of sleeping pills so that she would be hospitalized, hoping thereby to escape him. The pimp told the hospital personnel he was her guardian and they released her to his care. The pimp later stabbed her repeatedly when she refused sex with him. *People v. McNutt*, 146 Ill.App.3d 357, 361-62, 496 N.E.2d 1089, 1092-93 (1986) (conviction for kidnapping and coercion). These are not anecdotal aberrations. One study of juvenile prostitutes re-

7. This is not to say that child sexual abuse "causes" prostitution. As will be clear in the discussion of procurement strategies, and other circumstances compelling initiation into prostitution, *infra*, the demand for sexual access to women causes prostitution. These young women are not "causing" anything by being vulnerable to abuse.

ports that seventeen percent of young women were directly forced into prostitution by their pimps. Harlan, Rodgers, Slattery, Male and Female Adolescent Prostitution: Huckleberry House Sexual Minority Youth Services Project 34 (1981).

Other women are exploited while attempting to meet immediate survival needs. One woman, for example, reported that she became involved with a pimp when he offered to take care of her baby. She was thirteen years old at the time. Silbert & Pines, *Entrance, supra*, at 488. Most young women are initially "won over" by attention and apparent affection under conditions where they have little leeway to refuse or question the direction of the "relationship." K. Barry, *Female Sexual Slavery, supra*, at 77. Another tactic is for a pimp to provide bail money to an impoverished, isolated woman on the condition that she prostitute for him.

I tried maid's work but when they found out I wasn't living with my parents and not going to school they fired me. I was begging and shoplifting to live and got busted for shoplifting. Pimp came and got me off and told me I could pay him back by working the street.

Silbert & Pines, *Entrance, supra*, at 488. Women who believe they can outwit the pimp on this stratagem may be wrong. One woman reports having been taken to the pimps' apartment at knifepoint. She continuously refused to be prostituted, and was beaten, threatened with a knife, and burned on the leg with a curling iron. *Davis v. State*, 635 S.W.2d 737, 738 (Tex.Crim.App. 1982).

Forcing women to perform in pornography is another means by which pimps achieve control over women they prostitute. The pornography is used to threaten blackmail, inspire terror, and to break a woman's resistance to prostitution within a relationship promising "protection". Alone, friendless, and broke, a woman may be used in pornography by a pimp who otherwise appears harmless to her, and the only person who cares for her welfare:

The third night I was away from home I was wandering around the streets in a sort of daze when I was befriended by a man about twenty years my senior. I confided my problems to him and he offered to take me in. During my stay with him he treated me relatively well. He was kind to me, he fed me, and he said he cared about me. He also kept me drugged, spoke glowingly about prostitution and took nude photographs of me.

Attorney General's Commission, Final Report, *supra*, at 823 (footnote omitted). Similarly, photographs may be taken in circumstances where the woman believes her privacy will be respected by a "boyfriend", only to be confronted later with the "choice" between publication of the photographs

or prostituting for him. *See, e.g., Dula v. State*, 679 S.W. 2d 601, 602 (Tex.Ct.App. 1984).

In some instances, however, the pimp may forego reliance on deceit. He may prefer to force a woman into performing in pornography as a direct means of sexually brutalizing her and controlling her by terror.

This pimp made pornography of all of us. He also made tape recordings of us having sex with him and recordings of our screams and pleading when he gave us brutal beatings. It was not unusual for him to threaten us with death. He would later use these recordings to humiliate us by playing them for his friends in our presence, for his own sexual arousal, and to terrorize us and other women he brought home.

Attorney General's Commission, Final Report, *supra*, at 810 (footnote omitted). The pimp may conjoin strategies of systematic blackmail, sexual degradation and abuse, and coercion into pornography in a single efficient episode.

I was the main woman of a pimp who filmed sexual acts almost every night in our home . . . [He and another man] arranged to have women, who I assumed were forced to be there, have sex with dogs and filmed those acts. There were stacks of films all over the house, which my pimp used to blackmail people with.

Testimony, *Public Hearings on an Ordinance to Add Pornography As Discrimination Against Women Before the Minneapolis City Council*, Government Operations Committee, Session II, 48 (Dec. 12 and 13, 1983) (hereinafter cited as Testimony, *Minneapolis Public Hearings*).

Pornography is routinely "introduced" to women as a means of effecting a "transition" to prostitution. The pornography is intended to normalize the practices depicted in sex with the pimp and ultimately with customers.

My last pimp was a pornographer and the most brutal of all. He owned, on the average, three women and girls at any given time. There was always pornography in our apartment. Every night he would set up the projector and run a series of stag films. When he was sufficiently aroused he would choose one of us for sex. The sex that happened always duplicated the pornography. He used it to teach us how to service him. In retrospect the only sex I knew until I was well into my twenties was coercive sex taught me through pictures of women coerced into pornographic performances.

Attorney General's Commission, Final Report, *supra*, at 784-85. Another woman, speaking for a group of former prostitutes, has reported:

One of the very first commonalities we discovered as a group, we were all introduced to prostitution through pornography, there were no exceptions in our group, and we were all under eighteen . . . Pornography was our textbook, we learned the tricks of the trade by men exposing us to pornography and us trying to mimic what we saw. I could not stress enough what a huge influence we feel this was.

Testimony, *Minneapolis Public Hearings, supra*, at 46.

Once the pimp has achieved some measure of control or influence over the woman, a vast repertoire of practices may be used to compel her into prostitution, and keep her there. These techniques, commonly known as "seasoning" practices, include verbal and physical abuse intended to break the woman's will, restructure her social and psychological identity, and create paranoia of the outside world while simultaneously cutting off outside ties.⁸ See Barry, *Social Etiology, supra*, at 167. She is given a new name and new identity papers which both serve as cover from the police and separate the woman from her past. K. Barry, *Female Sexual Slavery, supra*, at 79. In one field research study of pimps, these practices were explained, by pimps themselves, as follows:

You create a different environment. It's a brainwashing process; the whole thing is creativity. When you turn a chick out, you take away every set of values and morality she had previously and create a different environment. You give her different friends.

She must cut all family ties, because, you see, she can't be with her family and ho [whore], too. You can't cope with bringing disgrace upon your mother or father, your sister or whoever it is. You have to get away from them.

Turning out a square broad means that you must literally change her mind.

C. Milner & R. Milner, *Black Players* 94-95 (1972). See generally, L. Lovelace, *supra* note 8. Pimps use pornography to inculcate an acceptance of the role the women are to play as prostitutes as one means of transforming the women's identity:

He used pornography to give me role models to follow, you know, women to try and portray. He'd say, "This is what I want you to look like."

8. Linda Marchiano states that "Strangely enough, what bothered me the most was the endless verbal abuse. He never let up: I was *so* dumb; I was *so* ugly; I was *so* fat; I was *so* thin; I was *so* flat-chested; and I was *so* lucky to have him taking care of me." L. Lovelace, *Ordeal* 51 (1980).

Interview with "A.D.", New York City, New York, WHISPER Oral History Project 24.

In addition, the woman may be raped, her children may be threatened, she may be systematically beaten and threatened with murder, and kept in a continuous state of poverty and indebtedness. *See, e.g.,* Barry, *Social Etiology*, *supra*, at 167, Erbe, *Prostitutes: Victims of Men's Exploitation and Abuse*, 2 Law & Inequality 609, 612-13 (1984); G. Geis, *One-Eyed Justice* 215-16 (1974). As described above, the woman may be used in pornographic performances to provide leverage for blackmail, to habituate her to sexual objectification and abuse, and to *produce* pornography.

When asked why young women don't leave their pimps when the pimps' intention to prostitute them becomes clear, the director of a prostitution outreach program replied:

The pimp will take out a razor and say "Bitch, you gonna leave me? I bought you all these clothes, food, gave you a place to stay. Bitch, you owe me fucking money." Sometimes they take photographs of her naked and threaten to send these to her high school. A pimp will always steal a girl's purse and get her home address. He'll threaten her family, threaten to send the nude photos.

Interview with T. Able-Peterson, *quoted in* 1 WHISPER, Spring 1986, at 6.

Another researcher described the following incident as a "not uncommon" dynamic in the "relationship" between a pimp and a prostituted woman:

He had a six-foot bullwhip and he hit me in the head with it. He told me he was going to take me home and kick my ass . . . It scared me so bad that I said to myself, "Slick, you are in for it now." We got home and he beat me with that bullwhip and told me to go to sleep.

Gray, *supra*, at 416. The outcome of these practices is that the woman "finds herself in a situation she has neither the physical nor psychological power to change." Barry, *Social Etiology*, *supra*, at 167.

And then there is the "work," itself. Bought and sold for change, women who are prostituted are reduced to sexual commodities. The result is a collapse in the woman's identity and destruction of her self-worth. One woman has described her experience in prostitution as follows:

The worst part about prostitution is that you're obliged not to sell sex only, but your humanity. That's the worst part of it: that what you're selling is your human dignity . . . When I really felt like a whore was when I had to talk to them . . .

That's the most humiliating thing—having to agree with them all the time because you're bought. That's why it's not as easy as just saying "prostitution is selling a service." That's why it's selling your soul and not selling a service. . . It involves a kind of contempt, a kind of disdain, and a kind of triumph over another human being.

Interview with "J." in K. Millett, *Prostitution: A Quartet for Female Voices*, in *Woman in Sexist Society* 104, 106 (V. Gornick & B. Moran ed. 1971). Initial customer encounters are described by some women as terrible, traumatic experiences. C. Jaget, *Prostitutes: Our Life* 59, 121, 143 (1975). Even after a number of sexual transactions with customers, women experience enormous pain from being sexually used, combined with guilt, self-disgust, and a sense of worthlessness. T. Able-Peterson, *Children of the Evening* 28–29, 58–59 and *passim* (1981); see also Enablers, Inc., *supra*, at 125. The resulting confusion of identity marks a transition to further isolation for the women. *Id.*⁹

Once a woman is initiated into prostitution,¹⁰ transactions with customers often involve the added dimension of the creation of a photographic record. One woman has estimated that one half of her customers wanted to take photographs of her, including requests that she have intercourse with a dog, that she be tied up and spanked. Interview with "J", Chicago, Illinois, WHISPER Oral History Project 61–62 (1987). Another woman estimates that she was photographed by tricks at least 20 times, the first time when she was fourteen years old. She was photographed, sometimes while bound, in various acts including masturbation, intercourse, penetration with pop bottles, sausages, dildoes. Interview with "R.M.", Portland, Oregon, WHISPER Oral History Project 54–56 (1987). Yet another woman reports having been photographed engaging in intercourse, with a Halloween mask covering her face. Interview with "C.D.", Minneapolis, Minnesota, WHISPER Oral History Project 57 (1987). For some men, the process of taking the pictures itself was the principal "sex act" involved in the transaction. One woman reports having been tied with rope on a bed, gagged and blindfolded, while the customer took pictures and masturbated. Interview with "L.C.", Minneapolis, Minnesota, WHISPER Oral History Project 75–76 (1987).

Of course, it is impossible to determine how many of the photographs

9. The abuse entailed in the "servicing" of clients of course extends to women who are not individually coerced by pimps, almost all of whom report having no other options for feeding themselves upon entering prostitution. Silbert & Pines, *Entrance*, *supra*, at 486.

10. It is a difficult matter to distinguish between a woman's entry into prostitution and into performing in pornography. The incidence of customers demanding that a woman perform for a camera is quite high, rendering the categories of behavior indistinguishable. See *infra*. Moreover, commercial institutions such as nude modeling studios and massage parlors similarly "merge" the practices. For example, women who are prostituted in massage parlors may be required to pose for pornographic pictures for advertising brochures and leaflets distributed on the street. See Interview with "R.C.", Portland, Oregon, WHISPER Oral History Project 20 (1987).

taken of women under these circumstances are marketed in commercial pornography. Although the production of commercial pornography is often described and analyzed separately from pornography fabricated by pimps and customers of prostituted women, for the women involved the distinction may be a meaningless one.

He had video equipment in his home long before it was mass produced. Every time my pimp sent me to him he would take pornographic pictures of me and a second woman. He also made video tapes of the sex that took place under his direction. This continued on the average of once a week for about a year.

There was an apartment that I was sent to often. There were usually two to three men there. After I had sex with them, they would take pictures of me in various pornographic poses. When I was a young girl I didn't have the vocabulary to call them pornographers. I used to refer to them as "the photographers."

On another occasion another young girl and myself were taken to an apartment in [sic] to meet some men. We were told that they were gangsters and that we should be nice to them. When we arrived we were taken into a room that had a large bed at its center surrounded by lighting and film equipment. We were told to act out a "lesbian scene". After about fifteen minutes we were told to get dressed, that they couldn't use us. We were returned to [our city] unpaid. Again, it was only in retrospect as an adult that I realized I had been used in a commercial pornographic film loop.

Attorney General's Commission, Final Report, *supra*, at 780-81 (footnote omitted).

Pornography is also forced on prostituted women by their customers both to describe the sexual acts they demand of the woman and to rationalize the demand.

[A] trick first showed me how to do bondage and discipline acts. I had numerous customers who would have pornographic material with them. I was asked to shave my pubic hairs because it reminded them of a child or engage in specific sex acts they had seen in a magazine. Having me urinate on them, commonly referred to as golden showers, was a popular request.

Again my customers, who were mostly professional types, would bring examples in magazines or books of the types of bondage they wanted or of other acts they thought would satisfy their sexual desires, like me acting like their mother, enemas, spanking or cross dressing (men dressing in women's undergarments or clothing).

Attorney General's Commission, Final Report, *supra*, at 793.

Prostituted women often develop strategies of distancing themselves from their bodies, splitting their affective selves from their physical selves as a mechanism for coping with the use to which their bodies are put. See Barry, *The Network Defines Its Issues: Theory, Evidence and Analysis of Female Sexual Slavery*, in *International Feminism: Networking Against Female Sexual Slavery* 42 (K. Barry, C. Bunch, S. Castley ed. 1984) (reporting presentation of Hanna Olsson). Women have repeatedly reported resorting to this attempt at self-protection.

When [the johns] touch my breasts, I tell myself they're not really touching me . . . [a]nd sometimes I wonder how I can let the men do that. I wonder what is left for me. I wonder where *I* am.

Edelstein, *In the Massage Parlor* 62, 63 in *Sex Work*, *supra*.

We did as we were told . . . as that was happening, I made myself go numb. I thought of myself as a metal robot, no human feelings at all, and that worked for a while. I was feeling nothing.

L. Lovelace, *supra* note 8, at 57. After several months of being prostituted, the same woman reported:

I was no longer experiencing things that made me feel good or bad. I felt as if my self had been taken away from me. I was not a person anymore. I was a robot, a vegetable, a wind up toy, a fucking-and-sucking doll. I had become someone else's thing.

Id. at 91.

However, this very survival strategy can entail serious adverse consequences for the woman. This attempt to resist, to refuse total submission to object status imposes a split in the self, Olsson, *supra*, at 42, which may further "season" a woman to exploitation. One former prostitute describes this outcome of this conditioning cogently.

The removing of oneself from one's body is a strategy for immediate survival; many prostitutes acknowledge this. This numbing . . . is flight from that which is intolerable. Numbing mechanisms become reflex quickly . . . It is my belief that numbing in sexual assault situations sets women up for tolerating abuse, especially prostitution and sado-masochism.

Summer, *supra* note 6, at 36.¹¹

11. Research on sexually abused children suggests that use of this tactic may ultimately result in the woman experiencing dissociative symptoms apart from her conscious control. Researchers theorize that dissociation was used as a strategy to avoid the experience of abuse and that later this becomes an autonomous symptom. Briere & Runtz, *Symptomatology Associated With Prior Sexual Abuse in a*

Women also seek to blunt the experience of prostitution by drug and alcohol abuse, which then becomes another economic "hook" into the practice and yet another barrier to being able to leave:

It's important for you to know that most women who turn tricks have to be loaded on something. You don't have any woman out there selling this commodity and doing this trading who's not loaded on something. They're not that hip to business. *And they're not that void* . . . There's a price a woman pays.

Interview with "M", in K. Millett, *supra*, at 65 (emphasis added). Another woman has reported:

When I first started to work the street my 11 month old girl was murdered by my pimp, and this started me using drugs so I wouldn't have to face the reality of what happened. It got to the point where drugs didn't help me anymore so I joined a drug program . . . Sure it helped me kick drugs, but all of a sudden I was awake and can see what I have become—which is nothing.

Letter from a woman prostituted for eight years, to Genesis House, a support program for prostituted women, *quoted in* 1 WHISPER, Winter 1986/87 at 7.

Further, in addition to the abuse incurred in "ordinary" sexual transactions with customers, prostituted women are subject to grave acts of violence by customers, including rape, beatings, customer-forced perversion and murder. Two hundred prostitutes were murdered in New York City in 1978. R. Rosen, *The Lost Sisterhood* 174 (1981). Forty prostituted women were murdered in the Seattle area between 1982 and 1984. Washington Post, Sept. 20, 1988, at § 1, A6. In one study of street prostitute victimization, seventy-eight percent of the women reported customer-forced perversion; an average of seventeen times per woman. Silbert & Pines, *Occupational Hazards of Street Prostitutes*, 8 Crim. Just. & Behav. 397 (1981) (hereinafter Silbert & Pines, *Occupational Hazards*). Seventy percent of the prostitutes reported customer rape or similar customer behavior, an average of thirty-one times per woman. *Id.* Sixty-five percent were physically abused and beaten by customers; an average of four times per woman. *Id.* See also Gray, *supra*, at 421. In the same study, approximately forty-one percent of the women reported assaults by police officers, including rapes and beatings. Silbert & Pines, *Occupational Hazards*, *supra*, at 367.

The rape, beating and torture promoted by pornography, together with the readiness of male customers to model their sexual demands on porno-

graphy, greatly enhances a woman's vulnerability to those forms of sexual abuse. Prostituted women, typically deprived of any means of effective resistance to sexual assault, become the "cathartic" instruments of sexual fascination with these acts, often at very high levels of violence and physical injury. See M. Silbert, *supra* note 6, at 61-69 (reporting extremely high levels of violence in almost every rape of prostitute subjects; seventy-three percent of subjects had been raped).¹²

He stripped me, tied me up, spread-eagled on the bed so that I could not move and then began to caress me very gently. Then, when he thought that I was relaxed, he squeezed my nipple really hard. I did not react. He held up a porn magazine with a picture of a beaten woman and said, "I want you to look like that. I want you to hurt." He then began beating me, and when I didn't cry fast enough, he lit a cigarette and held it right above my breast for a long time before he burned me.

Attorney General's Commission, Final Report, *supra*, at 789. Another former prostitute describes the following incident:

The man returned with two other men. They burned her with cigarettes and attached nipple clips to her breasts. They had many S and M magazines with them and showed her many pictures of women appearing to consent, enjoy, and encourage this abuse. She was held for twelve hours, continuously raped and beaten.

Testimony, *Minneapolis Public Hearings*, at 47. As the testimony of these women suggest, pornography may motivate the assault and be invoked to justify it. Prostituted women are, of course, no more immune generally from rape inspired by pornography than any other woman. One prostituted woman reports the following rape by a "non-customer":

They were cutting me and kicking me and I kept saying I was pregnant but they thought it was funny. They said all kinds of pornographic things about pornographic pictures of doing it to a pregnant women [sic].

12. The experience of prostituted women raped outside of their "work" suggests the sexual reasons why the assault of women within sexual transactions with customers is epidemic. Women sometimes attempt to defuse the levels of violence in non-customer rapes by telling the rapist that they are prostitutes; some data indicate that there was more violence involved in the rape when the woman disclosed this fact. For example, one woman reported:

I thought he knew I was a prostitute but he didn't. When I told him he got real mad and kept beating me and punching me.

M. Silbert, *supra* note 6, at 62. Where a customer seeks the sexual "kick" of a rape by raping a prostitute, he may be motivated to inflict other severe violence on her in order to achieve the sensation of having overcome her resistance. Thus, the danger to women generally posed by the eroticization of rape in pornography is yet more threatening to prostituted women, both because of their curtailed capacity to resist and because of their "stepping up" of physical violence required to fulfill the "demands" of the sexual dynamic for the man.

M. Silbert, *supra* note 6, at 63.

The suicide rate among prostitutes confirms the intolerable conditions under which these women are compelled to exist. Seventy-five percent of a sampling of "call girls" reported suicide attempts. G. Geis, *supra*, at 174. Reports from public hospitals indicate that fifteen percent of all suicide victims are prostitutes. *Id.*; see generally Erbe, *supra*, at 618-619 (prostitutes as victims of customer exploitation and abuse).

In a 1983 study submitted to the United Nations on the institution of prostitution, the reporter made several findings which sum up the description presented by amici of the oppression and exploitation of prostituted women. As to the "blame" due the victims, the reporter concluded that the causes of prostitution, including "poverty, frustration or lack of affection, trickery, and coercion on the part of procurers, makes it unnecessary to invoke any kind of mental weakness or supposed vicious inclination to explain why women fall into prostitution." Further, the reporter continues,

Once embarked on that course, they enter a state of servitude. Denied any independence, . . . subjected by the procurer to a very effective discipline that metes out punishment with an infrequent admixture of reward, they immediately find themselves in a marginal situation and undergo a psychological conditioning such as may be experienced by someone living in a community within a sect. When able to judge objectively, those women who have been able to escape from this environment realized that they were deprived not only of their name, but of their very identity. . . . Those few prostitutes who are not controlled by a procurer do not find it much easier to break free of their environment, so profoundly have they been marked by it and so strongly do they feel themselves rejected, as in fact they often are, by the "normal" society to which they wish to return. It would not be an exaggeration to say that, if she is to be successfully reintegrated into that society, a prostitute requires heroic courage.

U.N. Dept of Int'l Economic and Social Affairs, Report of J. Fernaund-Laurent, Special Rapporteur on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, at 12-13, U.N. Doc. ST/ESA/174, U.N. Sales No. E. 85. IV. 11 (1983).

Finally, we must question why it is true that prostituted women are "rejected" by "normal" society. The American hostages in Iran were filmed at Christmas, telling us they were well treated, well fed, and under no physical threat. Those films were not used to undermine them later, as evidence that they *were* well treated, contrary to their subsequent descriptions. Rather, the films were understood as evidence of *further* mistreatment and coercion. The experience of women coerced into making pornographic films while in prostitution is quite the opposite:

It was clear to me that in the years I was in prostitution that all of the women I met were systematically coerced into prostitution and pornography the same way a prisoner of war is systematically imprisoned, tortured and starved into compliance by his captors. The difference is that prisoners of war are not held responsible for coerced statements and acts but when a girl or woman is coerced in this very manner into prostitution and for use in pornography, she is held responsible.

Attorney General's Commission, Final Report, *supra*, at 809-810.

In the arena of First Amendment jurisprudence, arguments to the "slippery slope" are sometimes invoked to support the need for bright line rules in the doctrine, *see, e.g., Boos v. Barry*, 108 S. Ct. 1157, 1171-72 (1988) (Brennan, J., dissenting) or to explain the inevitability of certain results. Indeed, both the district and appeals courts in *Hudnut* set forth such arguments in their opinions. *Hudnut*, 598 F. Supp. at 1335-36; 771 F.2d at 327, 328, 330. Such arguments are often criticized as relying on unreal "parades of horrors" for rhetorical impact and as hypothetical to the point of absurdity. "Slippery slope" arguments can, of course, sometimes assist in sharpening analysis of the presence or absence of logical thresholds and limits to a particular legal rule. On the slippery slope of gender inequality, there is, however, no need to speculate as to the grade of the terrain or the risk of a fall to the bottom. For all women, prostitution is the bottom. Hundreds of thousands of real women have been pushed and kept there by the social avalanche of the demand that a class of women be available for sexual use by men. We already know because these women are already living it, or have already lost their lives for it. For these women, there were no thresholds, logical, legal, social, or sexual, to define the "limit" beyond which they could not be abused. We therefore urge this court, in pondering whether "Leda and The Swan" might be considered pornography under the ordinance, as postulated in *Hudnut*, in some fantasized future law suit, brought by some unidentified party, before an as-yet nameless judge, to bear in mind simultaneously that prostitution is not an hypothesized condition.¹³

In amici's view, the remedial provisions afforded in the ordinance would provide such a threshold, by means uniquely effective for prostitution victims. Section 3, subdivision 1 of the ordinance creates a cause of action for women coerced, intimidated, or fraudulently induced into performing in pornography. Like a refracted image in a kaleidoscope, coercion into

13. If the English language has any claim to being a language at all, rather than a tonal system of plosives and glottal stops, Yeats' poem is no more "pornography" under the ordinance than it is "obscenity," or, for that matter, a "frying pan." For an analysis of the application of the definition of pornography to this particular work, *see* Seator, *supra* note m, at 310 n.77 (1987). This article also cogently contrasts the use of "slippery slope" arguments in First Amendment doctrine with their application in equality analysis. *See id.* at 323 n.140

pornographic performances emerges as a repeated practice in the cycle of prostitution, inseparable from the panoply of coercive and exploitative means by which women are prostituted, from early sexual abuse to sexual transactions with customers to the production of commercial pornography. Moreover, short of the remedies in the ordinance, the permanent record created in the pornography renders it impossible for a woman ever wholly to escape prostitution. As long as the pornography is consumed, the material permits ongoing sexual access to the woman by anyone who can afford it, multiplied to limits set only by the constraints of available technology. So long as the pictures of her still exist as sexual commodities for exchange, she is being prostituted. The continued consumption of the pornography reinflcts the injury experienced in its production.

The Final Report of the Attorney General's Commission on Pornography reaches a similar conclusion in its summary of the effects of performing in pornography:

During the course of our review of the position of performers in pornography, we have encountered evidence that they suffer physical coercion, damage to health, serious economic exploitation, and virtually complete loss of reputation. The pornography which they helped to create will live on to plague them long after they have extricated themselves from modeling. Its effects subject performers to long-term effects potentially worse than any other form of sexual abuse, a fact noted tellingly by Dr. Ulrich Schoettle in the context of child pornography:

Pornography is a graphic form of exhibitionism . . . Pornography literally makes the child's body "available" for anyone willing to pay the price anywhere in the world.

The "privacy interest" of performers in pornography seem to us real and compelling, while the value of the material itself is often indisputably minimal.

Attorney General's Commission, Final Report, *supra*, at 898. These conclusions were based on testimonial and documentary evidence of injury sustained by *all* performers, including those who did not themselves directly identify their participation as "coerced", or report that they were otherwise engaged in prostitution.

As the Commission itself asserted, prostitution and performing in pornography from the point of the women used in each are not distinct activities. The Commission noted, in its study of the use of performers in pornography generally, the "similarity of backgrounds of many of these models to those of prostitutes," *id.* at 859 n. 983, finding the following characteristics to be generally true of commercial pornography's use of performers:

(1) that they are normally young, previously abused, and financially strapped; (2) that on the job they find exploitative economic arrangements, . . . serious health hazards, strong temptations to drug use, and little chance of career advancement; and (3) that in their personal lives they will often suffer substantial injuries to relationships, reputation, and self-image.

Id. at 888. The Commission further speculated that “[b]ecause pornography and prostitution are so strongly linked, it may of course be inferred that the coercion which historically and currently afflicts the latter will play some role in the former.” *Id.* at 867 n.1009. Certainly, when the woman is coerced, into the immediate performance as well as exploited as a prostitute, the effects may be yet more damaging than even those the Commission found “potentially worse than any other form of sexual abuse.”¹⁴

Moreover, the continued availability of the pornography stands as an enduring threat of shame and humiliation against a woman already severely abused. The pornography can be used at any time to topple whatever security and safety the woman may have been able to achieve, already against considerable odds. One woman who escaped prostitution and pornography states:

But there still exists the pornography that was made of me. I know the men who made it, I know where they are, and there is nothing I can do about it. I live knowing that at any time it could surface and could be used to humiliate me and my family. I know that it can be used to ruin my professional life in the future. I know because some of it was produced within months before my eighteenth birthday that it is protected under current law.

Attorney General’s Commission, Final Report, *supra*, at 808 (footnote omitted). When men who have seen pornography made of a woman then see her, she is targeted for physical injury and sexual assault. There is no “putting the abuse behind her,” because the abuse simply doesn’t end, so long as the material remains available for consumption. Again, unlike films made of prisoners of war, the pornography stands as testament that

14. Some prosecutors have also drawn a connection between prostitution and the production of pornography, seeking pandering convictions of producers of pornography on the theory that hiring persons to perform for such films or pictures is promotion of prostitution. See, e.g., *People v. Souter*, 120 Cal. App. 3d 1039, 178 Cal. Rptr. 111 (1981); *People v. Fixler*, 56 Cal. App. 3d 321, 128 Cal. Rptr. 363 (1976); but see *People ex rel. Van De Kamp v. American Art Enterprises, Inc.*, 75 Cal. App. 3d 523, 142 Cal. Rptr. 598, 758 P.2d 1128 (1988) (en banc) (disapproving *Fixler* and *American Art Enterprises* on First Amendment grounds); *People v. Kouner*, 96 Misc. 2d 414, 409 N.Y.S.2d 349 (Sup. Ct. 1978). See *Arcara v. Cloud Books, Inc.*, 106 S. Ct. 3172, 3177 (1986) (closure of bookstore under nuisance statute permissible where acts of prostitution transpired on the premises, rejecting First Amendment challenge) (“First Amendment values may not be invoked by merely linking the words ‘sex’ and ‘books’”, *Arcara*, 106 S. Ct. at 3177.). For reasons discussed *infra*, amici do not support this approach to the problem of coercion in pornographic performances, subjecting as it does the woman herself to prosecution for prostitution. However, amici are sympathetic to the view implied by this prosecutorial design that perceives prostitution and pornographic performances as overlapping descriptive categories.

she wanted all this, that she wasn't forced at all, that she wasn't injured, that she is the object the pornography depicts her to be.¹⁵

The ordinance affords monetary and injunctive relief to persons coerced into performing in pornography against makers, sellers, exhibitors and distributors of pornography produced by force. These remedial provisions could provide substantial redress to prostituted women so injured. The deterrent effect of the damages remedy may impede the open season practiced on women too naive, vulnerable, or sexually coerced to avoid being used in this way. The necessity of the injunctive remedy in perfecting the relief, and, in some cases, in providing a meaningful remedy at all, cannot be overemphasized. As shown above, the continued availability of the pornography operates as an ongoing grievous injury which is not and cannot be redressed by monetary damages alone.

The provisions of the ordinance which prohibit forcing pornography on a person, and create a cause of action for assault, physical attack, or injuring a person in a way directly caused by specific pornography, similarly describe injuries immediately linked to exploitative and abusive practices in prostitution. As amici have attempted to demonstrate, the lives of women in prostitution are defined by two major influences: the sexual demands of strangers, and the economic and sexual incentive of those who profit from providing women to meet those demands. These provisions of the ordinance at least place a legal floor on the means by which this exploitation can be accomplished. Forcing pornography on women emerges as the *sine qua non* of "seasoning" young girls to prostitution, battering them into compliance, fear, and a posture of hopelessness. The availability of the claim the ordinance provides could achieve some measure of "breathing space" to young women in resisting prostitution. Pimps are placed on notice that they must devise some other means of indoctrinating young women and silencing their refusals, confusion and shock.

Similarly, both provisions would provide redress for egregious customer abuse of prostitutes, especially rape and torture modeled on explicitly sadistic (often euphemistically referred to as "sado-masochistic") pornography. Amici would emphasize the need for injunctive remedies in meeting these ends. For women already under the control of a pimp or a customer, *post hoc* claims for damages against perpetrators, although important, are no substitute for removal of the pornography itself, and the consequent diminution of the supply of the material available for such use.

15. The pornographic record created of the woman, too, materially celebrates the "self-objectifying" mechanism women employ to avoid the experience of abuse. As she dissociates from her body, the pornography renders her an object for sexual consumption. The cruelty of this process lies in the fact that what is, for her, an attempt to maintain some sense of integrity by leaving her body behind, the pornography confirms as her identity. The "success" of the pornography, then, may be in direct inverse relation to her psychological and emotional trauma. Reconsider the "naturalism" of *Playboy* magazine. As will be described in what follows, pornography is "perfected" prostitution: an accessible woman transformed into a sexual object for consumption.

The ordinance also creates a claim against persons who traffic in pornography. This provision, in amici's view, is of greatest potential significance in curbing the traffic in women in prostitution. The traffic in pornography directly contributes to the immediate sexual demand for prostituted women. Promoters of prostitution often supply customers with pornography to arouse them sexually and to ensure a demand for their "product": live women, or more precisely perhaps, "animated pornography".

When I worked at massage studios, the owners had subscriptions to *Playboy*, *Penthouse*, *Penthouse Forum* and the like. These magazines were arranged in the waiting area of most of the massage places which I worked in. If a girl was not inside with a trick, she was expected to sit out front with the men who were waiting or who were undecided and to look at the magazines with them in order to get them titillated . . .

They used the soft porn to help them work up the courage to try the acts described in the magazine with the prostitutes at the massage studio.

Testimony, *Minneapolis Public Hearings, supra*, at 48.

I was also forced to work conventions. These were weekend affairs held at major hotels in New York attended by hundreds of professional men. The series of events was the same. Pornographic films followed by myself and other women having sex with the men. The films that were shown most often set the tone for the kinds of acts we were expected to perform.

Attorney General's Commission, Final Report, *supra*, at 784. Further, amici have already detailed the frequency with which customers make specific sexual demands on women patterned after the scenarios in pornography.

Even in instances where pornography may not be materially present, stimulating the customer and providing a script for his behavior, the effect of pornography in modeling the transaction is often apparent. One woman, formerly prostituted, reported the following events as an example of the common practice of using pornography as a sexual benchmark:

If pornography was not actually in the room with the client, there would be constant reference. One example is that a woman was in a room with two clients. One man told the other that he had seen some pictures of women who had shaved their pubic hair and that it had turned him on. They then proceeded with a jackknife to remove the woman's pubic hairs, plucking and burning what the knife missed. They made comments of how her hairless vagina reminded them of

their young daughter's genitals. They then, of course, engaged in intercourse.

Testimony, *Minneapolis Public Hearings, supra*, at 47. In sum, the traffic in pornography both creates a sexual incentive for prostitution and defines the conduct which will meet the sexual agenda so created.

The confirmation of this description rests squarely in the practices of pimps in training women for prostitution. Pimps are in the business of understanding the "market" in prostitutes, of meeting the sexual demands and preferences of customers, as well as creating a market for prostitutes by creating traffic in pornography—by the use of those same women. Their judgment on the quality of those demands cannot be bettered. It is plain that the conditioning and indoctrination of women to prostitution by pimps, as examined above, is dictated by the scenarios of pornography. Thus, in their judgment, selling customers "live" pornography describes the market, unerringly.

And what is the product? In amici's experience, and as the data presented here suggests, it is a woman who is available for sexual use as the ordinance defines pornography: an explicitly sexually subordinated woman, dehumanized as a sexual object, thing or commodity, treated as a sexual object who enjoys pain or humiliation, used as a sexual object who experiences sexual pleasure in rape, presented as a sexual object tied up or cut up or mutilated or bruised, or physically hurt, etc.¹⁶ These conditions precisely define how women are injured in prostitution, as well as why women are demanded in prostitution. Pornography, so defined, is "perfected" prostitution, which live women are coerced, violated, drugged, and turned into sexual robots to "enact" as well as they are capable, as many of the women were treated in order to produce it in the first place. Thus, the traffic in pornography, constructing as it does the sexual demand and specific "sexuality" of prostitution, is a direct causal factor in the victimization of women in prostitution.

16. This connection between the meaning of prostitution and the definition of pornography contained in the ordinance was analyzed by Professor Kathleen Barry, in her presentation at a recent conference on prostitution, *Trafficking in Women*, organized by The Coalition Against Trafficking in Women, Oct. 22, 1988, New York City, New York (unpublished paper).

The remaining definitional elements include:

- (v). women are presented in postures or positions of sexual submission, servility, or display; or
- (vi). women's body parts—including but not limited to vaginas, breasts or buttocks—are exhibited such that women are reduced to those parts; or
- (vii). women are presented as whores by nature; or
- (viii). women are presented being penetrated by objects or animals; or
- (ix). women are presented in scenarios of degradation, humiliation, injury, torture, shown as filthy or inferior, bleeding, bruised or hurt in a context that makes these conditions sexual.

B. *The City's interests in providing these remedies to prostituted women are compelling.*

By whatever measure this court may employ, redress of the injuries here described constitutes a compelling interest. The Supreme Court's holdings in *New York v. Ferber*, 458 U.S. 747 (1982) and *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984) plainly support this result. *See also Rotary International v. Rotary Club*, 107 S. Ct. 1742 (1987) (relying on *Roberts*, *supra*). In each case, the Court held an asserted infringement of First Amendment guarantees outweighed by a countervailing interest, specifically, impeding juvenile sexual exploitation, *see Ferber*, 458 U.S. at 756-64, and prohibiting discrimination against women. *See Roberts*, 468 U.S. at 624-27. Taken together, these same concerns describe those advanced by the ordinance. Intervenor's have already ably argued the application of those cases to this case. Amici will here argue the particular application of the Court's reasoning in *Ferber* and *Roberts*, in holding these interests compelling, to the condition of prostituted women.¹⁷

The most cogent facial distinction between *Ferber* and this case is, of course, that the statute at issue in *Ferber* criminalized "sexually explicit" performances by minors under the age of 16, *see Ferber*, 458 U.S. at 750-51, while the remedies contained in the ordinance are available to claimants without regard to age. However, parsing the urgency of the need for redress for injury by pornography experienced by women, and experienced by children, is both distorting as a matter of fact and legally irrelevant. As discussed above, the average age of women initiated into prostitution is sixteen or younger. The injuries amici have documented here do, in fact, substantially befall minor women, rendering this legislation supplemental to, and not exclusive of, the criminal sanctions upheld in *Ferber*. Nor do these injuries evaporate or disappear or subside once a girl passes the statutory age of majority. A sixteenth birthday, for her, likely means but one more day of the same abuse she endured the day before. The day she turns sixteen may be a day she is raped; the day after, she may be forced to perform in pornography. Turning eighteen may be significant only in that she is, by twenty-four hours, that much more likely to have sustained injury, and that much less likely to be able to escape prostitution.¹⁸

17. *A fortiori*, the City's justification for this regulation is also sufficiently "substantial" to satisfy the intermediate level of scrutiny applied to content-neutral legislation.

18. The Court in *Ferber* in fact showed some equivocation about the constitutional meaning of the age line drawn in the New York statute. Although the statute upheld in *Ferber* criminalized the production and distribution of "sexually explicit" material using a child younger than sixteen, *Ferber*, 458 U.S. at 750-51, the Court did not suggest that the age of sixteen had talismanic significance to its result. The Court noted, without suggesting possible constitutional infirmity, that sixteen state pornography statutes in effect at the time of the Court's decision defined "child" as a person under the age of eighteen, while four more placed the statutory age at seventeen. *Id.* at 764 n.18. Presumably, those statutes too would be constitutional directly under the *Ferber* holding. Thus, the *Ferber* balance

Further, the assumption made by the district court in *Hudnut* that "adult women generally have the capacity to protect themselves" from exploitation in pornography is contradicted in reality. *Hudnut*, 598 F. Supp. at 1334. Some women may be equipped with more durable social "buffers" than others, like money, a safer place to live, a secure job. However, as the data on the use of force in procuring women in prostitution presented above shows, where there is a demand for women prostituted for pornography, that demand will be met, by any means possible. Individual women can "protect themselves" only insofar as they are not, for the moment, demanded. The implicit assumption in the district court's statement therefore must be that the women exploited in pornography had the capacity to protect themselves, and chose not to exercise it. The documentation presented by amici hopefully puts that assumption to rest.

To the extent that the Supreme Court's opinion in *Ferber* is construed to turn on a presumed incapacity of minors meaningfully to consent to participation in sexually explicit performances, the scope of the substantive provisions in the ordinance renders that difference legally irrelevant. Four of the five causes of action in the ordinance require an explicit or implicit *showing* of lack of consent to sustain a prima facie case. Thus, the "presumptive" incapacity to consent implied as a predicate to the *Ferber* rationale is, under the ordinance, substituted with a required element of proof of coercion. Although the trafficking provision, by its terms, does not require a direct showing of force, it does mandate proof that the material subordinates women, in specified ways. As intervenors and other amici have shown, subordination itself is force. Moreover, as amici here have demonstrated, the traffic in pornography is both cause and effect in the victimization of women in prostitution, inseparable from the violence and duress to which they are subjected. Therefore, distinctions based on the degree of volition exercised by the victims in *Ferber* and women aggrieved under the ordinance cannot endure scrutiny.

The Court in *Ferber* also based its conclusion on its view that "[t]he value of permitting live performances and photographic reproductions of children engaged in lewd sexual conduct is exceedingly modest, if not *de minimus*." *Ferber*, 458 U.S. at 762. In support of this conclusion, the Court found it unlikely that such material would constitute an important part of a literary or scientific work, which could not be conveyed through alternative means. *Id.* It is similarly rare for materials which meet the definition of pornography in the ordinance to constitute an important part of such a work, contrary to the overblown assertions often raised against this legislation. In addition, the countervailing social commitment to

of harms is struck in favor of protecting women at least to the age of eighteen. The Washington child pornography statute criminalizes such conduct at different severity levels, depending on whether the child is younger than eighteen or younger than sixteen. Wash. Rev. Code §9.68A.040 (1988).

prohibiting discrimination against women further diminishes the claim to serious value made for material described in the ordinance.

Roberts v. U.S. Jaycees, 468 U.S. 609 (1984) struck a similar balance in holding the state's interest in curbing discrimination against women by exclusion from all-male professional clubs outweighed the male membership's First Amendment rights to freedom of expression. To the extent that the plaintiffs' expressive interests are arguably burdened to a greater degree under the ordinance than were the First Amendment interests asserted by the Jaycees in *Roberts*, see *id.* at 626-27 (finding Jaycees' interests little impeded by application of challenged regulation), amici contend that the competing interest in prohibiting those sex discriminatory practices described in the ordinance are of comparably enhanced significance. To state the point delicately, while exclusion from membership to all-male social club may significantly impede a woman's career development, women consumed in prostitution and pornography have somewhat more at stake than this.¹⁹

Prostitution and pornography are such entrenched institutions, so long touted as rooted in the free choice of women, normative and (therefore) harmless outcomes of male sexuality, and in any case inevitable, that the sex discriminatory purpose and effect of these practices becomes simultaneously obscured. The testimony of women and empirical evidence cited here clarifies the sex-based character and discriminatory result of these practices. Sexual harassment law also affords an appropriate legal framework for analysis. In concluding that sexual harassment in employment is "based on sex," the D.C. Circuit Court, in an early and influential opinion reasoned that "[b]ut for her womanhood, from aught that appears, her participation in sexual activity would never have been solicited." *Barnes v. Costle*, 561 F.2d 983, 990 (D.C. Cir. 1977)²⁰ see also *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 64 (1986) ("Without question, when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex," quoting 42 U.S.C.

19. Including rape, murder, beating, torture, and other acts criminalized under Washington law. See, e.g., Wash.Rev.Code § 9A.44 (1988) (rape); Wash.Rev. Code § 9A.46 (1988) (harassment, including threats to cause bodily injury in the future or threats of physical confinement); Wash.Rev.Code § 9A.40.020 (1988) (kidnapping in the first degree). Given the indivisibility of prostitution and pornography as institutions, and the emerging, clear evidence of the violent criminal conduct necessarily entailed in maintaining both, the rationale, if not the precise legal standard, excluding advocacy which incites lawless action from First Amendment protection lends weight to amici's argument here. See *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969); *Hess v. Indiana*, 414 U.S. 105, 107-09 (1973). Certainly the evidence of systematic coercion, intimidation and sexual terror necessary to the viability of the pornography industry qualifies the likelihood of such conduct more probable than a "general fear" of commission of future crime, *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503, 508 (1969), or "[m]ere speculation . . . that individuals might at some time engage in illegal activity." *San Diego Comm. Against Registration and the Draft v. Governing Bd.*, 790 F.2d 1471, 1479 (9th Cir. 1986), citing *Gay Student Orgs. v. Bonner*, 509 F.2d 652, 662 (1st Cir. 1974).

20. The court also noted that its analysis on this point was no less applicable to, nor defeated by, the use of men as sexual victims by other men or women. See *Barnes*, 561 F.2d at 990 n.55.

2000e-2(a)(1), Title VII of the Civil Rights Act of 1964). It also goes without saying that but for a prostituted woman's "womanhood," she would not have been coerced into prostitution in the first place, beaten, used and raped by customers and pimps, and terrorized, exploited and sold in pornography.²¹

Moreover, the injuries afforded redress under the ordinance lie at the heart of the prohibitions against sex discrimination elaborated in current law. Sexual harassment law proscribes any "requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living." *Vinson*, 477 U.S. at 67 (quoting *Henson*, 682 F.2d at 902). Clearly, the City's interest in affording remedies to women discriminated against in pornography and prostitution far exceed those interests advanced by legal prohibitions against sexual discrimination in employment.²² Here, the "employment" is better understood as a condition of sex discriminatory involuntary servitude, the "services" themselves "run[ning] the gauntlet of sexual abuse." See *United States v. Kozminski*, 108 S. Ct. 2751, 2765, 101 L.Ed.2d 788 (1988) (defining "involuntary servitude" as a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process); see also *United States v. Lewis*, 649 F. Supp. 1109 (W.D. Mich. 1986) (involuntary servitude plainly applied to defendant's conduct in frequently and severely beating children and forcing them to view the wounds of others); *United States v. Mussry*, 726 F.2d 1448 (9th Cir. 1984) (involuntary servitude indictment sufficient where facts alleged include transporting indigent foreign workers to U.S., keeping them in conditions of poverty and indebtedness, and withholding passports); *United States v. Warren*, 772 F.2d 827 (11th Cir. 1985).²³

21. This is not to suggest that boys and young men are not also used in prostitution and pornography. The point is that for a *woman* so used, *she* is used because she is a woman, and for no other reason.

22. Describing the use of women in pornography and prostitution as sex discrimination is not inconsistent with case law holding that enforcement of criminal prostitution statutes against women only does not violate equal protection principles. See, e.g., *State v. Wilbur*, 110 Wash. 2d 16, 749 P.2d 1295 (1988); *People v. Nelson*, 103 Misc. 2d 847, 427 N.Y.S.2d 194 (1980); *People v. Superior Court*, 138 Cal. Rptr. 66, 562 P.2d 1315 (1977). In *Wilbur*, the Washington Supreme Court denied an equal protection challenge to the facial terms of the Washington prostitution statute, which at that time criminalized *receiving* a fee for "sexual services" but not "*paying*" a fee. The court reasoned that the facial gender neutrality of the statute was sufficient to satisfy equality norms. The defendant did not raise an "as applied" challenge. In cases alleging discriminatory enforcement of prostitution statutes against women only, the claims typically founder on an insufficient showing of discriminatory intent on the part of law enforcement officers. *Nelson*, *supra*; *People v. Superior Court*, *supra*. In each class of case, the allegedly culpable party was the state or a state actor: the facial legislative design in *Wilbur*, the intent of police personnel in the discriminatory enforcement cases. Here, by contrast, it is the conduct of the parties *to* the transactions which constitute the sex discriminatory practices described here, a wholly distinct legal configuration for purposes of equal protection analysis.

23. Declaring these interests compelling is also consistent with constitutional norms of the state of Washington. Washington's state Equal Rights Amendment (ERA) mandates that "Equality of rights

Furthermore, an invidious sex discriminatory practice is discernible by its enforcement of "outmoded and archaic stereotypes" of female subservient roles. See *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982); *Frontiero v. Richardson*, 411 U.S. 677 (1973). The "stereotypes" promoted and enforced by the demands of the pornography industry are not limited to assumptions that males are breadwinners and heads of households, see *Frontiero*, 411 U.S. at 680; *Bobb v. Municipal Court*, 143 Cal. App.3d 860, 192 Cal. Rptr. 270 (1983), or that women are properly confined to certain traditional occupations, *Hogan*, 458 U.S. at 729-730, or physically incapable of participating in certain sports, *Yellow Springs Exempted Village School Dist. Bd. of Educ. v. Ohio High School Athletic Assn.*, 647 F.2d 651 (6th Cir. 1981), or less able competently to control family wealth, *Kirchberg v. Feenstra*, 450 U.S. 455 (1981). In each of the cited cases, courts concluded that enforcement of such stereotypes stigmatized and humiliated women, impeding their full participation in civil life.

What men buy, trade or take in prostitution and pornography is their stereotype of a woman. Whatever "woman" means to him, she must be; whatever he wants from a "woman", she must want, or not, as he wishes. From the customers' point of view, what is bought, traded or taken is an object which is gender-female. This is a modest law. It does not claim that using women as sexual objects for consumption is invidious sex discrimination. Rather, only the use of women as subordinate sexual objects who enjoy pain, take pleasure in sexual assault, who exist as body parts, or are mutilated and cut so qualifies. Stereotyping women as economically dependent in a marriage, so as to require them to rebut a legal presumption to that effect, is sex discrimination. *Frontiero*, 411 U.S. at 680. Amici respectfully submit that if that is sex discrimination, the sexual commodity exchange of women, requiring women to *live* the "stereotypes" demanded by men, as limited to the practices defined in the ordinance, is something more. If sex discrimination exists, this is sex discrimination. If sex discrimination harms women, this is the length and breadth and width of that harm. If securing equality for women can ever be deemed a compelling interest, by any means, this is the means.

and responsibilities under the law shall not be denied or abridged on account of sex." Wash. Const. Art XXXI, § 1. The state ERA has been construed to secure substantive sex equality, in excess of that vested under a "strict scrutiny" analysis for gender classifications. *Darrin v. Gould*, 85 Wash. 2d 859, 871, 540 P.2d 487, 492 (1978) (en banc), superseding an "equality of opportunity" rationale with an "equality of outcome" analysis. Thus, the state of Washington, placing even stronger constitutional weight on equality for women than the federal equal protection clause exerts against racial classifications, confirms the compelling nature of the interests asserted by intervenors and amici. The United States Supreme Court has reserved the question whether a state interest afforded under a state constitutional provision may outweigh free speech interests protected by the federal constitution. *Widmar v. Vincent*, 102 S. Ct. 269, 277 (1981). Amici do not here assert that the state ERA alone, however, mandates a result in intervenors' favor.

C. *The remedies afforded by the ordinance are narrowly tailored to provide prostituted women a means to escape.*

The substantive remedies provided by the ordinance extend no further than necessary to redress the injuries cognized by the law. Thus, the ordinance meets the final element justifying content-based restrictions on expression. *See, e.g., Riley v. National Fed'n of the Blind*, 108 S. Ct. 2667, 2679 (1988); *Boos v. Barry*, 108 S. Ct. 1157, 1164 (1988). As amici have discussed above, each of the remedial provisions interdicts conduct essential and crucial to the "task" of exploiting women in prostitution and sustaining the institution of pornography. Amici here will address two common objections to the scope of the remedies afforded by the ordinance: first, that the trafficking provision sweeps too broadly; second, that existing state criminal law sufficiently advances the interests protected under the ordinance so as to render the ordinance superfluous.

The traffic in women in prostitution and the traffic in pornography cannot, as amici have shown, be meaningfully distinguished, in life or logic. The trafficking remedy strikes at the core of the victimization of women by pornography. The remedy impedes the cycle of prostitution and pornography: by diminishing the incentive to produce pornography, the incentive to prostitute women to produce pornography is lessened; by slaking the sexual demand for prostituted women, the incentive to prostitute women to meet that demand is reduced. A similar rationale was relied upon by the Court in *Ferber* in upholding prohibitions on distribution of child pornography. There, the Court stated that "[t]he distribution network for child pornography must be closed if the production of material which requires the sexual exploitation of children is to be effectively controlled." *Ferber*, 458 U.S. at 759. Conversely, "the advertising and selling of child pornography provide an economic motive for and are thus an integral part of the production of such materials." *Ferber*, 458 U.S. at 761. Amici urge this court to adopt the *Ferber* court's reasoning in this case, presenting as it does an identical nexus between production, distribution, and sexual exploitation.

In addition, enforcement of the trafficking provision is crucial in effecting actual redress of the injuries described in the other substantive provisions. Amici are aware that proving a prima facie case establishing liability under any of these provisions would present difficult evidentiary hurdles for plaintiffs. To establish a claim for relief for a coerced pornographic performance, in addition to proving coercion, the woman of course must be able to name a defendant. In instances where the maker of the pornography was a customer, the anonymity of the transaction may render that effort futile. Where the maker was a pimp, and thus more readily identified by the woman, he may evade the jurisdiction of the court or take his chances in failing to make an appearance. In either case, the

material may be wholly unrecoverable, mooted a claim for injunctive relief and jeopardizing even a claim for damages. Claims against distributors would, for identical reasons, be fragile from the outset. In addition, proof of force under the prohibition against forcing pornography on a person, and proving legal causation under the assault provision place stringent constraints on the scope of liability under these sections. Establishing the ordinary elements permitting injunctive relief, i.e., the inadequacy of a legal remedy and irreparable injury (including the probability of continuing harm), under the facts often to be presented in such a case, would likely present very difficult obstacles to securing equitable remedies. *See, e.g., City of Los Angeles v. Lyons*, 461 U.S. 95 (1983). Thus, insofar as the other provisions describe injuries mandating redress, the trafficking provision is incontestably necessary to effect them.

The argument is sometimes made that enforcement of existing criminal sanctions against rape, prostitution, distribution of obscenity and related offenses will sufficiently curtail the "abuses" of pornography and adequately secure the safety of women, without resort to the remedies defined in the ordinance. In amici's experience, however, enforcement of these criminal prohibitions is both unresponsive to injuries sustained by prostituted women through pornography, and wholly impracticable. Enforcement of criminal laws pertaining to sexual assault depend almost entirely on the willingness and capacity of victims to report them to the police. For women in prostitution, the common reasons for not reporting sexual assault, that is, suspicion of police, fear, belief that the report will not be believed or taken seriously, are multiplied.²⁴ Moreover, the rate of police officer assault of prostituted women may be extremely high. As stated above, forty-one percent of prostituted women in one study reported assaults by police, including rapes and beatings. Silbert & Pines, *Occupational Hazards*, *supra*, at 397. These same personnel would be the recipients of complaints of rape, coercion, harassment, and kidnapping. It is unlikely that a woman in prostitution would find availing herself of criminal remedies, as suggested, a sufficient alternative remedy.

Moreover, the scope and effect of criminal sanctions against distribution of obscenity and prostitution do not adequately further the interests protected under the ordinance. Obscenity statutes, tailored to conform to the *Miller* standard, *Miller v. California*, 413 U.S. 15, 24 (1973), do not even address the injuries sustained by women coerced into performing in pornography, much less afford women meaningful remedies. The Court in *Ferber* eloquently rejected the argument that "it is enough" for a state to

24. Thus, in the Silbert & Pines study, eighty-one percent of the women who had been raped did not report the offense to the police. The most common reasons included embarrassment and fear that the rape would not be taken seriously. Of those women who *did* report, forty-nine percent found the police negative in their response, while twenty-three percent found them indifferent. M. Silbert, *supra* note 6, at 67-68.

prohibit the distribution of obscene materials to halt the exploitation of children in pornography. The Court concluded that the "prurient interest" prong of the *Miller* test bore no relation to the degree of harm suffered by the child. Moreover, whether work was patently offensive, did or did not have other value, and would be or not be tolerated under contemporary community standards were questions also deemed irrelevant to the likelihood of injury to a child performer. *Ferber*, 458 U.S. at 761.

Those same considerations, likewise, concern not at all whether a woman was coerced into performing for pornography and the remedies appropriate to redress those injuries. The numerous obscenity prosecutions for distribution of *Deep Throat* nevertheless left Linda Marchiano without remedy for the sexual humiliation, torture and rape necessary for its production and the harm of its continued distribution. Nor does the *Miller* test address the sexual terrorism effected by forcing pornography on a woman to show her what she's good for, or the trafficking in women caused by the distribution of pornography. If the given is the norm, all of these practices, apparently, conform to "contemporary community standards," in any event. Finally, enforcement of criminal prostitution statutes will not advance the purposes of the ordinance. Arresting, charging, fining or sentencing a woman for prostitution plainly does not provide her any more security from, or legal relief for, the injuries specifically described in the ordinance.

Conclusion

All women need this law. Prostituted women need it desperately. Because the ordinance promotes a compelling state interest, by means narrowly tailored to bring it about, amici urge this court to grant intervenors' cross-motion for summary judgment, and deny plaintiff's motion for summary judgment.

EPILOGUE

On February 9, 1989, the court granted plaintiffs' motion for summary judgment, concluding that the ordinance is unconstitutional.^r In reaching that conclusion, the court relied on its construction of the precedential effect of the Supreme Court's summary affirmance in *Hudnut*, stating the general rule that a summary affirmance may be disregarded only "if the statute under constitutional scrutiny presents issues that are different than the one previously reviewed."^s Here, the court found the Bellingham ordinance "virtually identical"^t to the ordinance declared unconstitutional in *Hudnut*, and therefore concluded that it was bound by that earlier ruling. The court reached this conclusion despite differences in the facial language and scope of the two ordinances, in the factual records before the courts, and changes in legal doctrine on the issues developed in the intervening years since *Hudnut* had been decided.

Speaking briefly to the injuries to women redressable under the ordinance, the court explicitly stated that "it is undisputed that many societal harms are caused by pornography."^u The court also quoted extensively from the *Hudnut* court of appeals opinion reaching the same conclusion.^v These words may have been inspired by authentic sorrow. Nevertheless, when coupled with a shrug, as in *Hudnut*, or a sigh, as in this case, recognition is no balm. The case will not be appealed.

^r *Village Books v. City of Bellingham*, *supra* note a.

^s *Id.* at 7.

^t *Id.* at 7-8.

^u *Id.* at 9-10.

^v *Id.* at 10, n.8. The court reiterated the following language from *Hudnut*:

Therefore we accept the premises of this legislation. Depictions of subordination tend to perpetuate subordination. The subordinate status of women in turn leads to affront and lower pay at work, insult and injury at home, battery and rape on the streets. In the language of the legislature, "[p]ornography is central in creating and maintaining sex as a basis of discrimination. Pornography is a systematic practice of exploitation and subordination based on sex which differentially harms women. The bigotry and contempt it produces, with the acts of aggression it fosters, harm women's opportunities for equality and rights [of all kinds]."

771 F.2d at 329, quoting Indianapolis Code § 16-1(a)(2).

APPENDIX

BELLINGHAM INITIATIVE 1C

Section 1. STATEMENT OF POLICY

Pornography is sex discrimination. It exists in Bellingham, Washington, posing a substantial threat to the health, safety, peace, welfare, and equality of citizens in the community. Existing state and federal laws are inadequate to solve these problems in Bellingham.

Pornography is a systematic practice of exploitation and subordination based on sex that differentially harms women. The harm of pornography includes dehumanization, sexual exploitation, forced sex, forced prostitution, physical injury, and social and sexual terrorism and inferiority presented as entertainment. The bigotry and contempt pornography promotes, with the acts of aggression it fosters, diminish opportunities for equality of rights in employment, education, property, public and private harassment, persecution and denigration; expose individuals who appear in pornography against their will to contempt, ridicule, hatred, humiliation and embarrassment and target such women in particular for abuse and physical aggression; demean the reputations and diminish the occupational opportunities of individuals and groups on the basis of sex; promote injury and degradation such as rape, battery, child sexual abuse, and prostitution and inhibit just enforcement of laws against these acts; contribute significantly to restricting women in particular from full exercise of citizenship and participation in public life, including in neighborhoods; damage relations between the sexes; and undermine women's equal exercise of rights to speech and action guaranteed to all citizens under the Constitutions and laws of the United States and the State of Washington.

Section 2. DEFINITIONS

1. Pornography is the graphic sexually explicit subordination of women through pictures and/or words that also includes one or more of the following:

- (i) women are presented dehumanized as sexual objects, things, or commodities; or
- (ii) women are presented as sexual objects who enjoy pain or humiliation; or
- (iii) women are presented as sexual objects who experience sexual pleasure in being raped; or

(iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or

(v) women are presented in postures or positions of sexual submission, servility, or display; or

(vi) women's body parts—including but not limited to vaginas, breasts, or buttocks—are exhibited such that women are reduced to those parts; or

(vii) women are presented as whores by nature; or

(viii) women are presented being penetrated by objects or animals; or

(ix) women are presented in scenarios of degradation, injury, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual.

2. The use of men, children, or transsexuals in the place of women in (1) above is also pornography.

Section 3. UNLAWFUL PRACTICES

1. Coercion into pornography: It shall be sex discrimination to coerce, intimidate, or fraudulently induce (thereafter, "coerce") any person, including transsexuals, into performing for pornography, which injury may date from any appearance or sale of any product(s), of such performance(s). The maker(s), seller(s), exhibitor(s), and/or distributor(s) of said pornography may be sued for damages and for an injunction, including to eliminate the product(s) of the performance(s) from the public view.

2. Trafficking in pornography: It shall be sex discrimination to produce, sell, exhibit, or distribute pornography, including through private clubs.

(i) City, state, and federally funded public libraries or private and public university and college libraries in which pornography is available for study, including on open shelves but excluding special display presentations, shall not be construed to be trafficking in pornography.

(ii) Isolated passages or isolated parts shall not be actionable under this section.

(iii) Any woman may file a complaint hereunder as a woman acting against the subordination of women. Any man, child, or transsexual who alleges injury by pornography in the way women are injured by it may also file a complaint.

3. Forcing pornography on a person: It shall be sex discrimination to force pornography on a person, including child or transsexual, in any place of employment, education, home, or public place. Only the perpetrator of the force or institution responsible for the force may be sued.

4. Assault or physical attack due to pornography: It shall be sex discrimination to assault, physically attack, or injure any person, including child or transsexual, in a way that is directly caused by specific pornography. Complaint(s) may be made against the perpetrator of the assault or attack and/or against the maker(s), distributor(s), seller(s), and/or exhibitor(s) of the specific pornography.

5. Defamation through pornography: It shall be sex discrimination to defame any person through the unauthorized use in pornography of their proper name, image, likeness, or recognizable personal evocation. For purposes of this section, public figures shall be treated as private persons. Authorization once given can be revoked in writing at any time prior to any publication.

Section 4. DEFENSES

1. It shall not be a defense that the defendant in an action under this law did not know or intend that the materials were pornography or sex discrimination, except that in an action for damages under Section 3(2), and in an action for damages against a publisher, seller, exhibitor, or distributor under Section 3(4), it shall be a defense that the defendant did not know or have reason to know that the materials were pornography.

2. It shall not, without more, constitute a defense to a complaint under Section 3(1) that:

(i) the person is a woman; or

(ii) the person is or has been a prostitute; or

(iii) the person has attained the age of majority; or

(iv) the person is connected by blood or marriage to any one involved in or related to the making of the pornography; or

(v) the person has previously had, or been thought to have had, sexual relations with anyone, including anyone involved in or related to the making of the pornography; or

(vi) the person has previously posed for sexually explicit pictures with or for anyone, including anyone involved in or related to the pornography at issue; or

- (vii) anyone else, including a spouse or other relative, has given or purported to give permission on the person's behalf; or
- (viii) the person actually consented to a use of a performance that is later changed into pornography; or
- (ix) the person knew that the purpose of the acts or events in question was to make pornography; or
- (x) the person showed no resistance or appeared to cooperate actively in the photographic sessions or in the events that produced the pornography; or
- (xi) the person signed a contract, or made statements affirming a willingness to cooperate in the production of pornography; or
- (xii) no physical force, threats, or weapons were used in the making of the pornography; or
- (xiii) the person was paid or otherwise compensated.

Section 5. ENFORCEMENT

1. Civil Action: Any person aggrieved by violations of this law may enforce its provisions by means of a civil action filed in a court of competent jurisdiction. No criminal penalties shall attach for any violation of this law.
2. Injunctions: Complaints under this law may request such temporary or permanent injunctive relief as may be constitutional, specifically appropriate, and equitable in order to effectuate the purposes of this law within the powers and jurisdiction of the court.
3. Relief: Civil damages may include punitive and compensatory relief; damages for suffering and emotional distress, and reasonable attorneys' fees, costs, and disbursements within the discretion of the court.

Section 6. SEVERABILITY

Should any part(s) of this law be found legally invalid, the remaining part(s) remain valid, consistent with the overall intent of this law.

Section 7. LIMITATION OF ACTION

Complaints under this law must be filed within six years of the discriminatory acts alleged.

